

**OPINION
69-347**

September 18, 1969 (OPINION)

Mrs. Leone Morrison

Acting Director

State Library Commission

RE: State - Library Service - Use of Bookmobiles

This is in reply to your letter of September 5, 1969, with regard to granting perpetual use of a state-owned bookmobile to local library authorities at the conclusion of a library demonstration period and with regard to cooperative efforts of public library boards of directors.

Your first question relates to concern of local library authorities in a designated library demonstration region with regard to continued use of the bookmobile after conclusion of the demonstration period.

Your first question is stated as:

Is there any legal impedient preventing the State Library Commission from granting perpetual use of a state-owned bookmobile to local library authorities at the conclusion of a library demonstration period?"

The Federal Public Library Services for Rural Areas Act, Chapter 16 of Title 20 U.S.C.A., has resulted in substantial contributions by means of funds obtained from the federal government by the state library commission to rural area library services. Recent state legislation recognizes and authorizes such activities. Thus section 54-24-03.1 of the North Dakota Century Code provides:

ACCEPTANCE OF FEDERAL AID. The state library commission is hereby authorized to accept and to expend in accordance with the terms thereof any grant of federal funds which may become available to the state for library purposes. For the purpose of qualifying to receive such grants, the state library commission is authorized to make such applications and reports as may be required by the federal government as a condition thereto."

We note that in Chapter 58 of the 1969 Session Laws and in Chapter 25 of the 1967 Session Laws very substantial sums have been appropriated for the item "Grants, benefits and claims."

Subsection 4 of section 54-24-03 of the 1969 Supplement to the North Dakota Century Code provides:

POWERS AND DUTIES OF LIBRARY COMMISSION. The state library commission shall: * * *

4. Make library materials available to libraries throughout

the state, to individuals connected with departments of state, and to citizens of North Dakota who do not have adequate library facilities, under the rules and regulations of the state library commission; * * *."

We note further that section 54-24-08 of the 1969 Supplement to the North Dakota Century Code provides:

LIBRARY COMMISSION CONTRACTS FOR LIBRARY SERVICES. The state library commission is hereby authorized and empowered to cooperate with, and to contract with municipalities, governmental subdivisions and agencies of the state of North Dakota and other states of the United States, in the extension of library services."

At the current time, of course, the director of institutions would perform the functions assigned to the state library commission under the above statutes. (See section 54-24-01 of the North Dakota Century Code and section 54-21-06.1 of the 1969 Supplement to the North Dakota Century Code.)

Interpretations of federal enactments that might be involved in this question should be handled by the federal agencies charged with their administration.

Looking to the state legislation involved, we note that the term of office of the members of the board of administration (other than ex officio members) was six years. (54-21-02 of the North Dakota Century Code.) The term of office of the director of institutions is specified to be four years (54-21-06 of the North Dakota Century Code.) The "Library Commission" does appear to have a great deal of discretion in the exercise of its functions under the current legislation. The state legislature also, of course, has a wide field of choice in determining present or future legislation and appropriations of funds and properties in the field of library administration.

While the hereinbefore quoted section 54-24-08 of the 1969 Supplement to the North Dakota Century Code does not in terms specify any specific limit on the contracts that might be entered into thereunder, we find it very difficult to construe same as allowing the present holder of the office of "Library Commission" to bind his successor in office to his office beyond his term of office. Noting further the changes in library legislation in the last several years, it seems difficult to construe present legislation in this field as authorizing the library commission to enter into agreements that would prevent legislative appropriation of properties currently devoted to library purposes within the scope of present legislation to a different phase of library operations or other related governmental activities in the future.

Under the current legislation we see no difficulty, in compliance with the federal programs, in allowing the use of a state-owned bookmobile for the pre-determined period necessary to bring a local library area to a given level of development, nor would we see any difficulties in allowing further use for periods of time no greater than current terms of office, which might in practical effect be

beyond the ordinary length of time in which such vehicles completely wear out. We would suggest, however, that if it is desired to grant perpetual use of a bookmobile to local library authorities, and same is justified by current present considerations, that same be accomplished by transfer of legal title of the vehicle to the local authorities.

Your second question relates to problems of a city public library contracting with other libraries in its general area to form a larger entity to cover a greater area than the city originally involved. You indicate that the city public library would be designated as the resource center of the larger entity. You call our attention to the provisions of section 40-38-04, subsection 2, of the North Dakota Century Code and the provisions of section 54-40-08 of the 1969 Supplement to the North Dakota Century Code. In this regard you ask whether said section 54-40-08 does broaden said section 40-38-04, subsection 2, to empower a public library board of directors, including a public library board of directors of a municipality to contract with any municipality, park district, and school district, or political subdivision of this state for library service and, if such is not the case, is a public library board of directors of a municipality empowered to contract with one or more municipalities for library service under section 40-38-04(2)?

The answer to this question depends, we feel, on the application of the principles set forth in sections 40-38-01, 40-38-04 and 40-38-11 of the North Dakota Century Code, and section 54-40-08 of the 1969 Supplement to the North Dakota Century Code.

Subsection 2 of section 40-38-04 and section 40-38-01 refer only to contracting with one or more municipalities or counties. Section 40-38-11 refers to the term of "political subdivisions" which would probably include counties and townships, but would not necessarily include cities. Section 54-40-08 includes municipalities, counties, park districts, school districts, and other political subdivisions of the state.

Generally speaking, it would appear that, as indicated in section 40-38-01 of the North Dakota Century Code, the primary cooperating authority is vested in the governing body of the municipalities or counties. Section 40-38-04 of the North Dakota Century Code appears to give the board of directors control and authority over the functions, powers, and funds specified therein, including the authority to agree to exercise such functions, powers, and funds pursuant to contractual arrangements made by them on behalf of their county or municipality with appropriate agencies of other counties and municipalities. Section 54-40-08 would appear to give a much broader scope of cooperative agreement, though with the qualification that same be "upon approval of their respective governing bodies." We note that this section, in addition to including municipalities and counties, also specifically includes park districts, school districts, or political subdivisions. It also includes such functions as acquisition of building sites, constructing buildings, the rather unusual authority to enter into lease-option and contract for deed agreements, and to accumulate funds. Section 40-38-11 appears to recognize consolidation of library services which would appear to be those functions specified under section 40-38-04, though

we note the section title indicates this is to be conditioned upon approval of voters.

In this context, we would assume that exercise of the broader powers specified under section 54-40-08 would be conditioned upon specific approval of the governing body of the political subdivision or municipality concerned. Exercise of the right of contract under section 40-38-04 would be limited to the powers and duties vested in the board of directors under said section, but would not necessarily require obtaining specific approval of the governing body of the municipality or county to the agreement as a prerequisite to entering into the contract.

HELGI JOHANNESON

Attorney General